HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.524 of 2006

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Between:

Shri D.Murali and ten others

……Appellants

And

State of Andhra Pradesh,
Rep., by its Secretary to Government,
Revenue Department, Secretariat, Saifabad,
Hyderabad and six others

……Respondents

:: JUDGMENT ::

Counsel for the Appellants : Shri D.V.Sitharam Murthy

Counsel for Respondent Nos.1 to 5 : Government Pleader for Assignments

Counsel for Respondent No.6 : Shri Ch.Dhanamjaya

November 02, 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 16-03-2006 passed by the learned Single Judge in Writ Petition No.9927 of 2002, whereby he declined the appellants prayer for quashing proceedings Rc.No.961/91/A dated 14-02-2002 issued by Mandal Revenue Officer, Visakhapatnam (Rural), Visakhapatnam for cancellation of assignment of land made in favour of Gokaraju Suryanarayana Raju.

It is borne out from the record that Smt.N.Sakuntala Syama Kumari, who is appellant in the connected Writ Appeal No.679 of 2006 is said to have purchased land measuring Ac.5.00 comprised in Survey No.335/3 from Smt.Akkaboyina Appayamma under a possessory agreement of sale dated 30-12-1987. Smt.Akkaboyina Appayamma died on 14-10-1989. Thereafter, Smt.N.Sakuntala Syama Kumari filed suit for specific performance against the legal representatives of the vendor. The same was registered as Original Suit No.320 of 2004 and was decreed by IX Additional District & Sessions Judge (Fast Track Court), Visakhapatnam, vide his judgment dated 9-2-2005. During the pendency of Execution Petition No.5 of 2005 filed by Smt.N.Sakuntala Syama Kumari, the legal representatives of Smt.Akkaboyina Appayamma are said to have executed sale deed in favour of the petitioner (Smt.N.Sakuntala Syama Kumari). However, when the sale deed was presented for registration, Sub-Registrar, Madhurawada, through his letter dated 24-3-2005 informed the executing court that the land comprised in Survey No.335/3 is a government land and the same could not have been sold. In view of that, the executing court, vide its order dated 29-3-2005, dismissed the execution petition. In the meanwhile, the patta

granted in favour of Akkaboyina Appayamma is said to have been cancelled by Mandal Revenue Officer, Chinnagadili vide his proceedings No.130/90/HA, dated 28-4-1990 and the land was allotted to Gokaraju Suryanarayana Raju on 10-8-1990.

Smt.Savitramma and Smt.A.Vijayalakshmi, through their General Power of Attorney holder filed Writ Petition Nos.5731 of 1991 and 5281 of 1993 respectively for quashing the cancellation of D-Form pattas granted to them in respect of Ac.5.00 each. Those petitions were allowed on 13-7-2001 and 30-8-2001 respectively and possession of the land was directed to be handed over to the petitioners. Writ Appeal No.1833 of 2004 filed against the order passed in Writ Petition No.5289 of 1993 was allowed by the Division Bench on 27-1-2005 and the matter was remanded to the Single Bench for fresh adjudication of the writ petition. On remand, the General Power of Attorney holder of the petitioner, Smt.Vijayalakshmi withdrew the writ petition.

In the meanwhile, Mandal Revenue Officer, Visakhapatnam (Rural) issued show cause notice to Gokaraju Suryanarayana Raju proposing to resume the land assigned to him, and vide proceedings dated 14-2-2002, the assignment made in favour of the noticee was cancelled. The appellants challenged the legality of proceedings dated 14-2-2002 by claiming that the reasons assigned by the Mandal Revenue Officer for cancellation of assignment are legally untenable.

The learned Single Judge took notice of the additional material papers filed by respondent No.7 along with WPMP.No.24084 of 2003 and the death certificate produced by the learned Government Pleader to show that Gokaraju Suryanarayana Raju had died on 28-9-1989 and declared that the assignment made in his favour was nullity. He further held that all the actions taken on the basis of assignment made

in favour of Gokaraju Suryanarayana Raju will have to be treated as nullity. This is evinced from the following extracts of the order under appeal:

> "From a perusal of the record, it appears that Gokaraju Suryanarayana Raju, a political sufferer, who died on 28.09.1989, was assigned the land in an extent of Ac.10.00, through proceedings dated 10.08.1990. Once the assignment itself is in favour of a dead person, the same is null and void and respondent Nos.3 to 13, who are petitioners in W.P.No.9927 of 2002, cannot plead that they are bona fide purchasers of the land assigned to the said Suryanarayana Raju, since the assignment itself is null and void. In that view of the matter, the petitioners cannot claim any relief from this Court in exercise of its jurisdiction under Article 226 of the Constitution of India nor can protect their possession through judicial process. It is well settled that once the fraud or illegality is detected in granting assignment, the High Court is not under obligation to extend its equitable jurisdiction to protect the persons benefited of the illegal assignment. Further, through G.O.Ms.No.633, Revenue (R) Department, dated 05.05.1982, the Government banned the assignment/alienation of Government vacant lands to other than public purposes in district and taluk head quarters, municipal towns and gram panchayats and prescribed the manner in which the said lands can be disposed of by the Collector after obtaining necessary permission. In view of the ban imposed by the Government, the permission accorded by Joint Collector and assignment made in favour of the dead person is void and the petitioners cannot derive any rights by purchasing the said property. It is well settled that if the order passed namely assignment made in favour of G. Suryanarayana Raju, is found illegal or invalid, it cannot be relied upon for setting aside the impugned order and quashing the impugned order namely cancellation of the assignment made will have the effect of restoring the illegal order/assignment. In such a case, the High Court shall be slow in exercise of its writ jurisdiction {See Gadde Venkateswara

> Rao v. Government of Andhra Pradesh (AIR 1966 Supreme Court 828)}. It is equally well settled that an order per se illegal cannot be legalized through judicial process. Having regard to the said fact, the petitioners in W.P.No.9927 of 2003 are not entitled to the relief as sought for and that they are the bona fide purchaser for value do not merit consideration."

Shri D.V.Sitharam Murthy, learned counsel for the appellants invited our attention to the grounds of appeal to show that the issue relating to the death of Gokaraju Suryanarayana Raju before the assignment of land was not taken in the pleadings of the respondents and the learned Single Judge relied on some documents produced by the learned Government Pleader during the course of hearing without giving his clients opportunity to controvert the same. Learned counsel also invited our attention to the documents filed along with WAMP Nos.1132 and 1610 of 2006 to show that Gokaraju Suryanarayana Raju had, in fact, died after the date of assignment. He then submitted that the order of the learned Single Judge should be declared as vitiated by an error of law and the matter be remanded for fresh adjudication of the writ petition of his clients on merits.

In our opinion, the finding recorded by the learned Single Judge that the assignment made in favour of Gokaraju Suryanarayana Raju was nullity, cannot be reversed by relying on the documents filed with WAMP.Nos.1132 and 1610 of 2006. However, we find substance in the grievance made on behalf of the appellants that they did not get opportunity to controvert the documents produced by the learned Government Pleader during the course of hearing to show that Gokaraju Suryanarayana Raju had died prior to 10-08-1990 i.e., the date on which land was assigned to him, and feel that the proper course available to the appellants is to seek review of the order under challenge by pointing out that the finding recorded by the learned

Single Judge is contrary to the records and the order under challenge suffers from an error apparent.

With the above observations, the appeal is dismissed with liberty to the appellants to apply for review of the order under challenge. If the appellants file an application for review of the order under challenge within a period of four weeks from today, the same shall be immediately listed for consideration before the concerned Bench.

Interim order dated 23-05-2006 passed by the Division Bench shall remain operative till the listing of review petition before the learned Single Judge.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

02-11-2006

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